

HOUSE No. 1707

By Mr. Rush of Boston, petition of Michael F. Rush and Kevin J. Murphy for legislation to regulate certain trust agreements in divorce proceedings. The Judiciary.

The Commonwealth of Massachusetts

In the Year Two Thousand and Seven.

AN ACT TO PROTECT THE INTENTIONS OF SETTLORS OR DONORS OF TRUSTS.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 Notwithstanding the provisions of this section or any other
2 general or special law to the contrary, no asset of a discretionary
3 trust created by a person related by consanguinity or affinity, which
4 has as a beneficiary a party to a divorce, shall be considered a
5 marital asset capable of division or assignment by the Court in a
6 divorce proceeding. In the event a party who is not the beneficiary of
7 such discretionary trust has gross income less than 300% of the fed-
8 eral poverty income level applicable to the size of that party's
9 family, then the income of such a discretionary trust may be consid-
10 ered for the purpose of making an order of child support under the
11 Child Support Guidelines or for the purpose of spousal support, but
12 only to the extent that such orders may be necessary to raise the
13 income of the non-beneficiary party to 300% of the federal poverty
14 income level applicable to the size of the party's family. Such trust
15 income may be taken into account without regard to whether the
16 trustee has exercised powers of discretion to make income distribu-
17 tions. For the purposes of determining the size of the non-
18 beneficiary party's family for the purposes of this section, said
19 family shall include the minor children of the divorcing parties.
20 Nothing herein is meant to determine the appropriate level of
21 support of a non-beneficiary party.

22 Any inheritance which has vested in a party after the filing of a
23 divorce complaint, any trust created for the benefit of a party after
24 the filing of a divorce complaint, or the beneficial interest of which

25 has vested after the filing of a divorce complaint, and any gift
26 received by a party after the filing of a divorce complaint, shall not
27 be considered marital property for the purpose of the division of
28 assets pursuant to G.L. c.208, sec.34.